IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 380 OF 2005

IN

APPEAL NO. 558 OF 2004

IN

NOTICE OF MOTION NO. 3527 OF 2002

IN

SUIT NO. 4007 OF 2002

Credence Property Developers Pvt Ltd. .. Appellants

versus

Chaudhary Abdul Majid Shahadat

and others .. Respondents

...

Mr.Yashodhan Divekar i/b Divekar & Co. for the appellant.

Mr.Snehal Shah a/w Mr.Jayesh Vyas for the respondent nos.5 to 10, 19, 20, 30, 31 and 37.

Mr.S.A. Divan i/b M/s.Thakore Jariwala & Associates for the respondent nos.1 to 4.

Mr.Jayesh Bhatt for the respondent nos.1 to 18.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ

DATED : 16th December 2005.

P.C.:

1. This Notice of Motion is at the instance of the original plaintiffs (respondent nos.1 to 4 in the appeal). Their grievance is that in breach of the order passed by the learned Motion Judge on 6th May 2004 and the order passed by Division Bench on 21st October 2004, the appellant (defendant no.6) has carried out construction of basement. It is further alleged that in the breach of the aforesaid orders, the appellant has started foundation/piling work for construction of buildings other than the building "G" and "H" and that the appellants have been attempting to sell the premises in the building nos. "G" and "H" by issuing allotment letters.

2. The plaintiffs have also prayed by means of this Notice of Motion that appeal be dismissed under Order 39 Rule 11 read with section 151 of the Code of Civil Procedure as the appellants have acted in violation of the order dated 21st October 2004.

3. It needs no elaboration that the order passed in the appeal arising out of the interlocutory order is

effectively an order in the suit and for the purposes of the suit. Thus, the effect of the order passed by the Division bench on 21st October, 2004 at the interim stage in appeal is that the said order became operative during the pendency of the suit. If there is any breach of the order dated 21st October 2004, then an application for disobedience has to be made to the learned Single Judge having assignment of such matters. The application made before the Division Bench under Order XXXIX Rule 24 of the Code of Civil Procedure for breach of the order dated 21st October 2004 cannot be maintained as such application has to be made before the learned Single Judge. Moreover, according to the plaintiffs, the appellant - defendant no.6 has also breached the order dated 6th May 2004 passed by the learned Single Judge. Obviously, therefore, application for disobedience of the orders dated 6th May 2004 as well as 2st October 2004 has to be made before the learned Single Judge.

4. For the sale same reasons, we are of the view that the application under Order XXXIX Rule 11 of the Code of Civil Procedure may be made before the learned trial Judge for striking off the defence of the said defendant.

5. This Notice of Motion is accordingly, dismissed as not maintainable. However, as this shall not preclude the plaintiffs from making an appropriate application before the learned Single Judge.

6. Notice of Motion stands disposed of.

(R.M. LODHA, J)

(D.G. KARNIK, J)